IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 5.7.2006

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.(PD) No.1581 of 2004

Muthusamy .. Petitioner

vs.

1.K.Ganesan
2.Perumayee .. Respondents

Revision Petition filed against the order dated 9.3.2004, made in I.A.No.1231/2003 in I.A.No.486/2002 in O.S.No.86/2002, on the file of the District Munsif, Sankari.

For Petitioner : Mr.P.Jagadeesan
For Respondents : Mr.T.R.Rajaraman

ORDER:

This revision petition has been filed by plaintiff in O.S.No.86/2002 on the file of District Munsif Court, Sankari. The suit was filed by the plaintiff for a permanent injunction restraining the defendants from interfering with peaceful possession and enjoyment of the suit schedule property which is land and building.

2. After filing the written statement the defendants/respondents filed I.A.No.486/2002 to struck off the suit from the file on the ground that the plaintiff was not the owner of the property and therefore he is not entitled to file the suit on behalf of his wife. When I.A.No.486/2002 was pending, the revision petitioner as plaintiff filed I.A.No.1231/2003 under Order 7 Rule 14(3) of the Code of Civil Procedure for receiving the document dated 5.9.2003 which is the settlement deed executed by his wife in his favour when the suit was pending. This application was resisted by the respondents herein by contending that even after the settlement deed which is hit by lis pendence, the revision petitioner cannot derive any title or possession and therefore the suit filed by the petitioner herein is not maintainable.

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3. The trial Judge by order dated 9.3.2004, accepted the contentions of the respondents herein and dismissed the application. Aggrieved by the order the plaintiff has filed the above revision petition.

4. Heard the learned counsel for the revision petitioner and the learned counsel for the respondents.

5. The learned counsel for the petitioner contended that wherever subsequent events of facts or law which have a material bearing on the entitlement of the parties to relief or on aspects which bear on moulding the relief occur, the court is not precluded from taking a cautious cognizance of the subsequent changes in fact and law to mould the relief. He also submitted that I.A.No.1231/2003 was filed for getting the permission to mark the document, which is the settlement deed dated 5.9.2003, executed by the wife of the plaintiff in his favour, after the suit was filed. This subsequent event of fact will have a material bearing on the relief sought for by the plaintiff and therefore the trial court ought to have taken cautious cognizance of the subsequent event of fact by receiving the document dated 5.9.2003. He relied on the judgment of the Hon'ble Supreme Court reported in AIR 1992 S.C. 700 (Ramesh Kumar v. Kesho Ram) for this purpose.

6. I find force in the submission of the learned counsel for the petitioner. Without going into the merits of the order dated 9.3.2004, passed by the trial Judge, I hold that the approach adopted by the trial Judge to reject the application is not in consonance with the guidelines given by the Hon'ble Supreme Court as well as our High Court.

7. In (2001) 3 SCC 1 (Bipin Shantilal Panchal v. State of Gujarat), the Hon'ble Supreme Court held as follows:-

> "13. It is an archaic practice that during the evidence-collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the court does not proceed further without passing order on such objection. But the fallout of the above practice is this: Suppose the trial court, in a case, upholds a particular objection and excludes the material from being admitted in evidence and then proceeds with the trial and disposes of the case finally. If the appellate or the revisional court, when the same question is recanvassed, could take a different view on the admissibility of that material in such

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cases the appellate court would be deprived of the benefit of that evidence because that was not put on record by the trial court. In such a situation the higher court may have to send the case back to the trial court for recording that evidence and then to dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves. Such practices, when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or remoulded to give way for better substitutes which would help acceleration of trial proceedings.

14. When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence-taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objection to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.)

15. The above procedure, if followed, will have two advantages. First is that the time in the trial court, during evidence-taking stage, would not be wasted on account of raising such objections and the court can continue to examine the witnesses. The witnesses need not wait for long hours, if not days. Second is that the superior court, when the same objection is recanvassed and reconsidered in appeal or revision against the final judgment of the trial court, can determine the

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correctness of the view taken by the trial court regarding that object, without bothering to remit the case to the trial court again for fresh disposal. We may also point out that this measure would not cause any prejudice to the parties to the litigation and would not add to their misery or expenses."

8. This judgment was followed by a learned Single Judge of this court in the judgment reported in 2001 (4) CTC 597 (Devaraj, V.R. v. G.Narayanasamy)

9. In the above judgment, the learned Judge observed as follows:-

"8. Under Rule 3 of Order 13, C.P.C., the Courts are vested with a discretion to reject any document, which it considers irrelevant or otherwise inadmissible at any stage of the suit, of course, by recording the reason for the same. In the recorded reasons for rejecting the document in question, the trial court has stated that the document is neither irrelevant nor inadmissible in evidence but only stated that the document if admitted would belittle the value of the partition deed. For rejecting the document being marked in evidence the Court has to conclude with reasons as to relevancy, or admissibility of the document. But as stated supra, no such conclusion has been arrived at by the trial Court, while passing the order.

9. Further, in the judgment reported, the Supreme Court evolved a procedure to be followed by the trial Courts, whenever an objection is raised regarding the admissibility. To put it in the words of the Supreme Court, the procedure evolved runs as follows:-

""13. It is an archaic practice that during the evidence-collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the court does not proceed further without passing order on such objection. But the fallout of the above practice is this: Suppose the trial court, in a case, upholds a particular objection and

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excludes the material from being admitted in evidence and then proceeds with the trial and disposes of the case finally. If the appellate or the revisional court, when the same question is recanvassed, could take a different view on the admissibility of that material in such cases the appellate court would be deprived of the benefit of that evidence because that was not put on record by the trial court. In such a situation the higher court may have to send the case back to the trial court for recording that evidence and then to dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves. Such practices, when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or remoulded to give way for better substitutes which would help acceleration of trial proceedings.

14. When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence-taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objection to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.)

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16. We, therefore, make the above as procedure to be followed by the trial Courts whenever an objection is raised regarding the admissibility of any material or any item of oral evidence."

10. In the light of the procedure evolved by the Hon'ble Supreme Court and our Court, I direct the trial court to receive the document dated 5.9.2003 filed along with the application in I.A.No.1231/2003 subject to the objection of the respondents herein and mark the objected document tentatively as an exhibit. The objection and the admissibility or otherwise of the document could be decided at a later stage, i.e., either at the time of disposing of I.A.No.486/2002 or at the time of disposing of the suit. If at the relevant time, if the court below finds that the objection so raised is sustainable then the document dated 5.9.2003 could be excluded from consideration at that time only.

11. In the result, the Revision Petition is allowed with the above direction. No costs. C.M.P.No.14655/2005 is closed.

sks

Sd/
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Sub Asst.Registrar

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To

1. The District Munsif, Sankari.

2. The Record Keeper, VR Section,
High Court, Madras.

+ 1 cc to Mr. P. Jagadeesan, Advocate SR No.29102

+ 1 cc to Mr.T.R. Rajaraman, Advocate SR No.28888

PV(CO)
SR/20.7.2006

Pre-delivery order,
C.R.P.(PD)1581/04.

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